

1 DIEMER, WHITMAN & CARDOSI, LLP
JUDITH L. WHITMAN, #103385
2 75 East Santa Clara Street, Suite 290
San Jose, California 95113
3 Telephone: (408) 971-6270
Facsimile: (408) 971-6271
4

5 ATTORNEYS FOR
MARK KESEL
6
7

8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 In re:)	Case No. 10-41653 RJN
12 MARK KESEL)	CHAPTER 11
13 Debtor.)	
14)	Date: May 26, 2010
15)	Time: 9:30 A.M.
16)	Place: 1300 Clay Street
17)	Courtroom 220
)	Oakland, CA 94612
)	Judge: Randall J. Newsome

18
19 **STATUS CONFERENCE STATEMENT**

20 Debtor, Mark Kesel ("Debtor"), submits the following status conference statement for the
21 status conference scheduled in this case on May 26, 2010, at 9:30 A.M.

22 1. Brief Statement of Objectives

23 Debtor filed his Chapter 11 case on February 16, 2010. The Chapter 11 filing was
24 precipitated by a judgment entered in favor of Applied Materials and against Debtor in the sum
25 of \$1,427,927.94. Debtor's Notice of Appeal was filed in December 2009 (pre-petition) and this
26 Court granted Debtor Relief from Stay to pursue an appeal of the judgment on April 7, 2010.
27 That appeal is now pending in the Federal Circuit Court. The opening brief and opposition brief
28 have been filed. Debtor's reply to the opposition is due in late May 2010.

1 Currently Debtor's sole source of income is derived from an apartment building Debtor
2 owns in Berkeley. The value of this building is estimated to be \$1,500,000. There is a first deed
3 of trust in the sum of \$735,000. The payments on this loan are current. There are additional four
4 liens on the building amounting to \$821,710. One of these liens was due last year. To date, the
5 lender (who is Debtor's sister) has agreed to extend the time for payment. Payment on the other
6 three liens is not due until 2013. Debtor has arranged for a management company to collect the
7 rents, pay the mortgage and building expenses and turn over the remaining sums to Debtor which
8 Debtor uses for his living expenses.

9 The objectives and course of Debtor's Chapter 11 case depend on the outcome of the
10 pending appeal of the Applied Materials' judgment. If the appeal is successful and it is
11 determined Debtor is not liable to Applied Materials for \$1,427,927.94, Debtor's Chapter 11
12 concerns will focus on restructuring the above described debt on Debtor's apartment building.
13 On the other hand, if the appeal is not successful and Debtor remains liable to Applied Materials
14 for the \$1,427,927.94 judgment, Debtor's Chapter 11 case will also have to deal with that debt.

15
16 2. Anticipated date to file Plan and Disclosure Statement

17 As noted above, the structure of Debtor's Chapter 11 Plan depends on the outcome of the
18 appeal which is currently pending in the Federal Circuit Court. Debtor will be in a position to
19 file his Plan and Disclosure Statement when that appeal has been decided and the scope of
20 Debtor's liabilities is established.

21
22 3. Monthly Operating Reports

23 Debtor is current on filing his monthly operating reports. His March 2010 report was
24 filed on April 9, 2010. His report for April 2010 will be filed on or before May 20, 2010.
25 Debtor's debtor-in-possession bank account is with Wells Fargo Bank. Debtor deposits the
26 income he receives from the apartment building into this account and he pays his living expenses
27 from this account. In addition, prior to filing his Chapter 11 case, Debtor had small bank
28 accounts with Bank of America, Citibank and FDIC Credit Union. The accounts with Citibank

1 and FDIC are several years old and the balances in the accounts are approximately \$100 each.
2 Debtor wishes to maintain those banking relationships but will not use these accounts while he is
3 in bankruptcy. The Bank of America account was established to cover Debtor's daughter's
4 school lunches and the payment arrangement could not be altered during the school year. Debtor
5 will make other arrangements to pay for his daughter's school lunches for the next school year.
6

7 4. Insurance

8 Debtor has current and adequate insurance coverage on his home, his apartment building
9 and his vehicle.
10

11 5. Post-petition payments to Taxing Authorities

12 Debtor is current on all post-petition (and pre-petition) tax payments.
13

14 6. Retention of Professionals

15 Debtor's application to employ Judith L. Whitman of Diemer, Whitman & Cardosi, LLP
16 as his Chapter 11 counsel was approved and an order to that effect entered on March 15, 2010.

17 On April 6, 2010, Debtor submitted an application and declaration to employ Jeffrey I.
18 Kaplan as Special Counsel to pursue Debtor's appeal of the Applied Materials' judgment. On
19 April 13, 2010, the United States Trustee filed an objection to the Kaplan application, requesting
20 clarification of the relationship between Debtor and the entities who paid Mr. Kaplan's fees and
21 the basis upon which the fees were being paid. On April 29, 2010, a supplemental declaration
22 from Jeffrey I. Kaplan, and declarations from Oleg Tachkov and Jacob Obolsky were filed to
23 address the United States Trustee's concerns. On April 30, 2010, the United States Trustee filed
24 a Notice of Resolution of Objection to the Application to Employ Mr. Kaplan as Debtor's
25 Special Counsel. As of the date this Status Conference Statement is filed, the Order approving
26 Mr. Kaplan's employment has not been signed. Debtor respectfully requests that his application
27 to employ Mr. Kaplan be approved and the Order be entered as soon as possible since Mr.
28 Kaplan is now working on preparing a reply to Applied Materials' opposition brief.

1 7. Cash Collateral / Obtaining Credit

2 Debtor is current on his payments to the lender holding the first deed of trust on the
3 apartment building. When Debtor's counsel contracted Gordon Gerson, the attorney
4 representing this lender, concerning a cash collateral agreement, Mr. Gerson advised that such an
5 agreement was unnecessary since the loan is current and has remained current prior to and
6 following the bankruptcy filing.

7 Debtor has no plans to obtain additional credit.

8
9 8. Miscellaneous

10 a. Credit Counseling – Debtor has completed both credit counseling classes and
11 certificates for both have been filed (Docket numbers 4 and 28).

12 b. Extension of Dischargeability Deadline - On April 16, 2010, Debtor and Applied
13 Materials stipulated that the deadline for Applied Materials to file a complaint to
14 determine dischargeability would be extended to the first business day that is 45
15 days after the mandate is issued in the Appeal by the Federal Circuit Court. An
16 Order approving that Stipulation was filed on April 20, 2010.

17
18 9. Conclusion

19 Until the appeal of the Applied Materials' judgment is decided, Debtor will not be in a
20 position to submit a Disclosure Statement or Chapter 11 Plan. Accordingly, Debtor respectfully
21 requests that this Status Conference be continued for 90-120 days.

22 Respectfully submitted,

23 Dated: May 11, 2010

DIEMER, WHITMAN & CARDOSI, LLP

24
25 By: /s/ Judith L. Whitman
26 Attorneys for Debtor
27
28